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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/780,732	02/09/2001	Graham Pereboom	PHN 16,417A	6921

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PHILIPS INTELLECTUAL PROPERTY & STANDARDS
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EXAMINER

BOOKER, KELVIN E

ART UNIT	PAPER NUMBER
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2121

DATE MAILED: 01/12/2004

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/780,732

Applicant(s)

PEREBOOM, GRAHAM

Examiner

Kelvin E Booker

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 October 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☒ Other: *Detailed Office Action*.

DETAILED ACTION

Response to Amendment

1. In Amendment "B", filed October 10, 2003 (see paper no. 4), independent **claims 1, 4-7, 10 and 11** have been amended, and **claims 1-11** are presented for further examination.

Response to Arguments

2. Applicant's arguments with respect to **claims 1, 4-7, 10 and 11** have been considered but are moot in view of the new ground(s) of rejection.

Specification

3. The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.

Double Patenting

4. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

5. **Claims 1-11** are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over **claims 1-11** of copending Application No. 09/090,037. Although the conflicting claims are not identical, they are not patentably distinct from each other because both applications focus on a communication system which employs (1) a transmitter for transmitting cyclically a plurality of mutually related objects via a communication network, whereby an assembly means is used to combine mutually related objects, relative to an application, into transport entities in order to allow transmission consistency, whereby the transport entity includes an indication of size of the contained objects; and (2) a terminal connection to a network for receiving and processing the mutually related objects, wherein an indication of size is used in determining object positioning in the transport entity.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

7. **Claims 1, 4-7, 10 and 11** are rejected under 35 U.S.C. 102(e) as being anticipated by Kuwabara et al., U.S. Patent No. 5,909,439.

As per claim 1, Kuwabara et al. teach of a communication system comprising:

a. a transmitter for transmitting cyclically a plurality of mutually related objects via-a communication network including assembling means for combining the mutually related objects that relate to an application into a combined transport entity to allow transmission consistency of the objects, *wherein the transport entity includes an indication of size for each of the mutually related objects* (see column 12, lines 35-47: cyclically transmitting via a communication system;

and column 33, line 48 through column 34, line 23: header information used to determine characteristics of the mutually related objects); and

b. a terminal connected to the network for receiving the objects and including processing means for processing the plurality of mutually related objects for extracting the plurality of mutually related objects from the common transport entity *and the indication of size for each of the mutually related objects*, and for processing the plurality of mutually related objects *using the indication of size to determine the position of each object in the transport entity* (see column 13, lines 41-64: receiving terminal and means for processing; and column 33, line 48 through column 34, line 23: header information used to determine characteristics of the transport entity).

As per claims 4-7, 10 and 11, the same limitations are subjected to in claim one, therefore the same rejections apply (see claim one above).

Conclusion

8. The following prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

- A. Augenbraun et al., U.S. Patent No. 5,797,001;
- B. Metz et al., U.S. Patent No. 5,768,539;
- C. Fuhrmann, U.S. Patent No. 5,745,837;
- D. Augenbraun et al., U.S. Patent No. 5,617,565;
- E. Huang et al., U.S. Patent No. 5,617,145;
- F. Dawson et al., U.S. Patent No. 5,594,490;
- G. Brooks et al., U.S. Patent No. 5,973,684;

H. Kostresti et al., U.S. Patent No. 5,822,324;
I. Kostreski et al., U.S. Patent No. 5,734,589;
J. Kostreski et al., U.S. Patent No. 5,729,549;
K. Mansfield, Jr. et al., U.S. Patent No. 5,530,939;
L. Yamaguchi et al., U.S. Patent No. 6,674,477;
M. Osakabe et al., U.S. Patent No. 6,539,094;
N. Kostreski et al., U.S. Patent No. 6,130,898;
O. Tsukagoshi, U.S. Patent No. 6,115,077;
P. Sambamurthy et al., U.S. Patent No. 6,085,248;
Q. Shimoji et al., U.S. Patent No. 6,353,930;
R. Taniguchi et al., U.S. Patent No. 6,222,841;
S. Yamanaka et al., U.S. Patent No. 5,983,247;
T. Metz et al., U.S. Patent No. 5,978,855;
U. Yamanaka et al., U.S. Patent No. 5,930,808; and
V. Augenbraun et al., U.S. Patent No. 5,857,181.

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after

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the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

10. An inquiry concerning this communication or earlier communications from the examiner should be directed to Kelvin Booker whose telephone number is (703) 308-4088. The examiner can normally be reached on Monday-Friday from 7:00 AM-5:30 PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anil Khatri, can be reached on (703) 305-0282. The fax number for the organization where this application or proceeding is assigned is (703) 872-9306.

An inquiry of a general nature or relating to the status of this application proceeding should be directed to the receptionist whose telephone number is (703) 305-3900.

K.E.B.

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January 5, 2004



ANIL KHATRI
SUPERVISORY PATENT EXAMINER